



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D. C. 20530

September 7, 1999

The Honorable Tom Bliley
Chairman
Committee on Commerce
U.S. House of Representatives
Washington, D.C. 205 15

Dear Mr. Chairman:

This responds to your letter to the Attorney General, dated July 29, 1999, which requested information about the Department of Justice's actions with respect to an ongoing antitrust enforcement investigation associated with the privatization of the Internet domain name system (DNS). As your letter indicates, the Administration is in the process of transferring its stewardship of the DNS to the private sector. Pursuant to this transfer, Network Solutions Incorporated (NSI), is facing competition now for the business of registrants in the .com, .net, and .org top-level domains. This competition may offer registrants not only lower prices for registering domain names, but also new and enhanced services related to domain name registration.

Of course, as with any transition from monopoly to competition, a number of issues will inevitably arise that could impact the success of the transition. For example, as long as the registry function for generic top level domains such as .com is provided on an exclusive basis, the exclusive registry operator may be in a position to exercise monopoly power over registrars and, in turn, DNS users. Accordingly, there needs to be a mechanism to address this potential. Consequently, as you point out, a critical element of the transition to competition and private-sector coordination of the DNS is the outcome of the Commerce Department's continuing negotiations with NSI concerning issues including NSI's recognition of, and accountability to, the Internet Corporation for Assigned Names and Numbers (ICANN).

Like the Committee on Commerce, the Department of Justice's Antitrust Division has supported the Commerce Department's efforts in carrying out this transition. This is a continuation of the Antitrust Division's competition counseling of the Administration's interagency working group that focused on policy relating to the future of the DNS. As with all its competition-advocacy activities within the Administration, the Antitrust Division has brought and will continue to bring a competition-policy perspective to the Administration's interagency deliberations.

In addition, the Department separately has received allegations that NSI may be engaging in activities that could amount to an illegal maintenance of its current monopoly in violation of Section 2 of the Sherman Act. The Antitrust Division currently is investigating those allegations. You are absolutely correct in noting that the Department has a long-standing policy of not publicly disclosing sensitive information about pending law enforcement matters. None of the conduct referenced in your letter was in violation of that policy.

The Department of Justice distinguishes policy matters from enforcement matters. The conversation described in the e-mail attached to your letter was about competition-policy matters; it did not concern, nor did it refer to, the Department's ongoing enforcement investigation. As such, we do not believe that conversation is in any way problematic. Numerous individuals, groups, and businesses often engage in conversations with representatives of the Antitrust Division regarding competition-policy issues. Indeed, for us to do our job as the competition-policy advocate within the Administration, such conversations are a required part of our work.

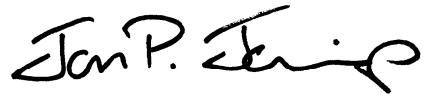
Consistent with and in furtherance of conducting the ongoing law enforcement investigation, we have had a number of conversations with various entities in or potentially involved in this market. In order to collect factual information at the investigatory stage of enforcement matters, it is typical to seek information or to discuss certain information with a complaining party and/or the focus of the investigation. It is only once the true facts have emerged can they be examined to determine if they potentially amount to an antitrust law violation. That being said, however, outside of conducting the factual investigation into the potential enforcement matter, the Department does not and should not disclose the facts or other information regarding its investigation to others. As a law enforcement matter, we do not disclose publicly sensitive law enforcement information developed during an ongoing investigation, including the sources of our investigatory information, and we have not done so in this matter.

You have asked for a description and any records relating to all communications between the DOJ and ICANN. We have had a handful of communications with representatives of ICANN, as briefly described in the enclosures. We also have enclosed our records of those communications. We have redacted information relating to our pending law enforcement matter as well as information that does not relate to ICANN communications.

You also have asked for a written explanation as to why the Department "re-initiated its antitrust investigation of NSI" in April 1999. We received allegations from a private entity that NSI was engaged in potentially anticompetitive conduct that we believed justified a further factual investigation. Those allegations did not come from ICANN. No communications between DOJ and ICANN led to the April action referred to in your letter. The investigation into those allegations remains ongoing.

I hope this information is helpful. I want to assure you that our actions in this matter, as in all antitrust-related matters, are designed solely to promote competition in the economy and properly and appropriately to enforce the antitrust laws. Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon P. Jennings". The signature is fluid and cursive, with a large, stylized "J" and "P".

Jon P. Jennings
Acting Assistant Attorney General

Enclosure

cc: The Honorable John Dingell
Ranking Minority Member